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Third Party Plaintiff, Richard K. Diamond

FILED & ENTERED

MAY 30 2014

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY *fortier* DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
SMB GROUP, INC.,
Debtor.

Case No. 2:11-bk-30426-BR

Chapter 11

SMB GROUP, INC.,
Plaintiff,

vs.

RICHARD K. DIAMOND,
Defendant.

Adv. No. 2:13-ap-01020-BR

**ORDER RE: SPECIAL MOTION TO
STRIKE COUNTERCLAIM PURSUANT
TO ANTI-SLAPP STATUTE AND
LITIGATION PRIVILEGE FILED BY
SMB GROUP, INC. AS DOCKET ENTRY
NO. 79 AND SETTING HEARING FOR
JULY 9, 2014**

RICHARD K. DIAMOND,
Counterclaimant,

vs.

SMB GROUP, INC., etc.,
Counter-defendant.

Date: April 3-4, 7, 17-18, 2014
Time: 10:00 a.m.
Ctrm.: "1668"
255 E. Temple Street
Los Angeles, California 90012

RICHARD K. DIAMOND,
Third Party Plaintiff,
vs.
IN CHUL SHIN, aka JEFF SHIN,
Third Party Defendant.

The Court having considered the Notice Of Special Motion And Special Motion To Strike Counterclaim Pursuant To Anti-SLAPP Statute And Litigation Privilege And For Sanctions In The Amount Of \$61,964 filed on December 11, 2013 as Docket Entry Number 79 (“SMB’s Special Motion”) by the Plaintiff and Counter-defendant, SMB Group, Inc., as Chapter 11 debtor and debtor in possession (“SMB”), as well as other papers and testimony in the above captioned adversary proceeding (“the Action”); the Court having determined that SMB’s Special Motion was filed by SMB after the expiration of the sixty (60) day period provided for in Section 425.16(f) of the California Code of Civil Procedure (“the CCP”); the Court having further determined that SMB’s Special Motion was frivolous within the meaning of Section 425.16(c)(1) and Section 128.5 of the CCP as well as being a motion subject to review under Section 1927 of Title 28 of the United States Code and other applicable law; and good cause appearing therefor; it is hereby,

ORDERED, that, SMB’s Special Motion, be, and it hereby is, **DENIED**; and it is hereby further,

ORDERED, that, any motion by Richard K. Diamond, as Defendant, Counterclaimant and Third Party Plaintiff in the Action (“Diamond”), to recover Diamond’s costs, expenses and/or attorneys’ fees from SMB and/or SMB’s attorneys in connection with SMB’s Special Motion should be noticed for a further hearing on **July 9, 2014** at **10:00 a.m.** before the undersigned

1 United States Bankruptcy Judge as well as filed and served by Diamond in conformity with Local
2 Bankruptcy Rules 9013-1 through 9013-3; and it is hereby further,

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4 **ORDERED**, that, pending expiration of the time for Diamond to file and serve a motion
5 pursuant to this Order and thereafter, in the event that Diamond files and serves a motion in
6 accordance with this Order seeking to recover Diamond's costs, expenses and/or attorneys' fees
7 from SMB and/or SMB's attorneys, this Court will retain jurisdiction to hear and determine any
8 such motion filed by Diamond notwithstanding any appeal filed in this Action.

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23 Date: May 30, 2014



24 Barry Russell
25 United States Bankruptcy Judge
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